



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION IX

**75 Hawthorne Street
San Francisco, CA 94105-3901**

January 22, 2010

Todd K. Nishikawa
Manager, Compliance & Enforcement Section
Placer County Air Pollution Control District
3091 County Center Drive, Suite 240
Auburn, CA 95603

Re: EPA Comments on Proposed Renewal of Title V Operating Permit for Sierra Pacific Industries, Lincoln Division

Dr. Mr. Nishikawa:

Thank you for the opportunity to review the Placer County Air Pollution Control District's ("District") proposed title V permit renewal for Sierra Pacific Industries' Lincoln facility.

During our review of the proposed permit and statement of basis, we identified potential objection issues (federal enforceability, CAM plan approval, inadequate statement of basis) pursuant to 40 C.F.R. 70.8(c). We have enclosed our comments, which contain recommendations aimed at addressing those issues as well as improving and expanding the statement of basis. Based on the productive discussions we have had with you and your staff on these issues, we are confident that our concerns will be addressed. However, in light of these circumstances, we request that the District provide us an opportunity to review its revised draft permit and statement of basis prior to issuance of the final permit. We will expedite our review to minimize the impact on the timely issuance of the permit renewal.

We look forward to working with the District to address our comments and issue the renewal in a timely fashion. Please contact Roger Kohn at (415) 972-3973 or kohn.roger@epa.gov if you have any questions concerning our comments.

Sincerely,

A handwritten signature in black ink, appearing to read "Gerardo C. Rios".

Gerardo C. Rios
Chief, Permits Office
Air Division

EPA Region 9 Comments
Sierra Pacific Industries, Lincoln Division
Permit No. SPI-001-1

1. The proposed permit contains 16 conditions marked "District only." The District's statement of basis does not provide any rationale for making these conditions not federally enforceable. EPA's long-standing position is that all provisions contained in an EPA-approved SIP and all terms and conditions in SIP-approved permits are already federally enforceable (see 40 CFR § 52.23), even if a District is using versions of its new source review rules that are more recent than those approved in the SIP.¹ Exceptions are requirements based on state law requirements not found in federal law, such as public nuisance or some health risk-based provisions. Some of the 16 conditions may appropriately be designated as District only based on the exceptions cited above. But the majority of these conditions derive from District permits issued pursuant to a SIP-approved permitting program, other SIP-approved rules, or title V (e.g., the requirement added to the title V permit to maintain a supply of spare bags for the baghouse at the facility); therefore these conditions are federally enforceable.

As a result of discussions of this issue, the District has decided that only five conditions (3.B.1, 3.G.1, 3.I.6, 4.Q, and 6.C.8) will remain District only in the final permit. The District should document the basis for designating these conditions District only in the statement of basis.

2. The electrostatic precipitator ("ESP") used to control particulate emissions from the boiler is subject to Compliance Assurance Monitoring ("CAM"), 40 CFR Part 64. The proposed permit contains only one CAM condition, 3.O.5, which requires the permittee to "comply with the monitoring provisions contained in the Compliance Assurance Monitoring Plan approved in writing by the District. Once approved, the most recent Compliance Assurance Monitoring Plan shall be affixed to this permit."

This approach is problematic in two ways. First, Part 64 requires permitting authorities to review CAM plans submitted by sources and either approve or disapprove them prior to Title V permit issuance. The language of condition 3.O.5. implies that the District has not yet made a determination of whether the applicant's proposed CAM plan is acceptable, and that this will occur in the future. However, the District must make this determination prior to permit issuance so that the permit will contain the required CAM elements. The District should document its determination in its statement of basis, and revise this condition to reflect this timing.

Part 64 requires final permits for sources subject to CAM to contain the indicators to be monitored, the means or device used to measure the indicator, the performance criteria specified in §64.3(b) or (d), the definition of exceedance or excursion, and the obligation to conduct monitoring, reporting and recordkeeping. See §64.4(c). The only CAM requirement in the proposed permit is condition 3.O.5, discussed above. While there is

¹ See May 20, 1999 letter from EPA to STAPPA/ALAPCO, which we provided to the District via email on January 7, 2010.

nothing in the CAM regulations that explicitly prohibits the approach of addressing CAM in title V permits with only one high level permit condition that incorporates the source's CAM plan into the permit, doing so makes it harder for the District to enforce the Part 64 requirements. EPA encourages the District to at least include the basic monitoring elements listed in §64.4(c) within the text of the permit. This would provide clarity to both the permittee and the District, which would help inform inspectors and enable more effective enforcement of the Part 64 requirements.

3. Part 70 was revised when Part 64 was promulgated. One of the changes was to §70.6(c)(5)(iii), which now requires that annual compliance certifications "identify as possible exceptions to compliance any periods during which compliance is required and in which an excursion or exceedance as defined under part 64 of this chapter occurred." The compliance certification condition (7.B) does not include this requirement. The District must add this language to this condition consistent with the requirements of §70.6.
4. The District's statement of basis does not adequately describe the regulatory and policy issues or document decisions the District has made in the permitting process. There is no discussion of CAM applicability (pollutant, control device, what monitoring the source has proposed and whether the District is approving it) or justification for the conditions the District has marked as District enforceable only. The statement of basis also does not mention the facts that the boiler is subject to a New Source Performance Standard ("NSPS), i.e., Subpart Db of 40 CFR 60, and that the source has an EPA-issued Prevention of Significant Deterioration ("PSD") permit. The District has not provided an analysis of the District's de facto streamlining of overlapping emission limits from Subpart Db, the EPA-issued PSD permit, and District NSR requirements.

EPA has provided guidance on statement of basis content on several occasions. For example, the EPA Administrator's May 24, 2004 Order responding to a petition to EPA to object to the proposed Title V permit for the Los Medanos Energy Center in Pittsburg, CA includes the Administrator's response to statement of basis issues raised by the petitioners . The Order states that:

A statement of basis ought to contain a brief description of the origin or basis for each permit condition or exemption. However, it is more than just a short form of the permit. It should highlight elements that EPA and the public would find important to review. Rather than restating the permit, it should list anything that deviates from a straight recitation of requirements. The statement of basis should highlight items such as the permit shield, streamlined conditions, or any monitoring that is required under 40 C.F.R. 70.6(a)(3)(i)(B)... Thus, it should include a discussion of the decision-making that went into the development of the title V permit and provide the permitting authority, the public, and EPA a record of the applicability and technical issues surrounding the issuance of the permit.

In general, the District should expand its statement of basis in accordance with EPA guidance. In this case, the District should expand its statement of basis to address CAM

and federal enforceability, and identify NSPS and PSD as applicable requirements. Furthermore, since the District has streamlined the overlapping NSPS, PSD and NSR requirements, the District must provide a streamlining demonstration in the statement of basis in accordance with EPA guidance.² To complete the streamlining exercise, the District should add references to NSPS Subpart Db and EPA PSD permit SAC 88-01 to the citations of origin and authority for the conditions that ensure compliance with these subsumed requirements.

5. The District must add one or more conditions which contain applicable NSPS Subpart A (General Provisions) requirements to the permit. EPA recommends that the District add a condition that requires compliance with “the following” NSPS General Provisions, and then list the provisions apply to the facility, citing by CFR and a descriptive phrase, e.g. 60.7(c) CEMS Reporting, etc.
6. The permit shield condition (4.P) does not refer to any applicable requirement, and therefore has no effect. Sources may request, and permitting authorities may grant at their discretion, permit shields under two circumstances. A permitting authority may grant a shield from an applicable requirement if it has been incorporated into the permit, or if the permitting authority determines that a requirement is not applicable to the source. In either case, the shielded requirement must be specifically identified in the permit. Since the source has not requested a permit shield, and condition 4.P lacks language necessary to create a permit shield, the District has agreed to delete this provision. Deleting the shield will not prevent the District from adding proper permit shield language in the future, if the source requests a shield and the District grants the request.
7. Condition 5.B allows the source to use alternative boiler fuels upon approval by the District. It appears that the District is trying to create an alternative operating scenario; yet without specificity regarding the fuel(s), this condition does not satisfy the requirements of a title V alternative operating scenario. EPA recommends that the District delete this condition, and instead revise condition 2.A.2.b. (which contains a list of allowable fuels) to allow “any other fuel approved in writing by the APCO that does not emit a new pollutant or increase the amount of pollutants emitted.” If the source wants an alternative operating scenario to burn new types of fuels with different emissions characteristics, the permit must identify the fuel(s) and contain specific conditions for each operating scenario in accordance with the District’s EPA-approved title V program (Rule 507, Sections 401.9.a and 402.2.q)

² White Paper Number 2 for Improved Implementation of the Part 70 Operating Permits Program, March 5, 1996